

UNION OF INDIA AND ORS.

A

v.

B. RAMA MURTHY

JANUARY 27, 1995

[K. RAMASWAMY AND B.L. HANSARIA, J.J.]

B

*Service Law—Computation of half of the dearness pay for computation of pension—No invidious discrimination in the classification of pensioners—Office memorandum more beneficial to the retired employees.*

C

Government of India's Office Memorandum which treated half of the dearness pay as pay to compute retirement benefits was challenged by the respondent. The Central Administrative Tribunal declared it to be *ultra vires* as offending Article 14 of the Constitution.

Before the O.M. 3/10ths of the 10 months average pay was computed D for pension but after the O.M. the computation was 5/10ths.

D

Allowing the appeal filed against the Tribunal's order, this Court

HELD : There is no invidious discrimination in the classification of the pensioners who retired at different dates and in computation of the pension for different periods. O.M. is more beneficial to the retired employees. [666-G-H]

E

*State of Rajasthan v. Seva Nivatra Karamchari Hitkari Samiti, (1995) 1 Scale 40, relied on.*

F

*Krishan Kumar v. Union of India, [1994] 4 SCC 207; Indian Ex-Service League v. Union of India, AIR (1991) SC 1182 and State of Rajasthan v. Rajasthan Pensioner Samaj, AIR (1991) SC 1743, referred to.*

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 2986 of G 1995.

From the Judgment and Order dated 9.8.89 of the Central Administrative Tribunal, Hyderabad in T.A. No. 45 of 1988.

K.N. Shukla, A.K. Srivastava and C.V.S. Rao for the Appellants.

H

A Ms. Indira Sawhney for the Respondent.

The following Order of the Court was delivered :

Leave granted.

B The Government of India in O.M. No. 18(4)-EV/79 dated May 25, 1979 introduced in paragraph 3(iii) that half of the dearness pay was treated as pay to compute retirement benefits. That came to be challenged by the respondent in filing O.A. before the Central Administrative Tribunal, Hyderabad. The Tribunal in the impugned order dated August 9, 1989 following a judgment of the Bangalore Tribunal declared it to be *ultra vires*, offending Article 14 of the Constitution. Thus this appeal by special leave.

C The benefit of the O.M. is to facilitate calculation of 10 months' average pay for the purpose of pension. Earlier, only 3/10th of the 10 months average pay was computed for pension. Under the impugned order in para 3(iii) of the O.M. dated May 25, 1979, the computation would be 5/10th i.e. half of the dearness pay for the purpose of computation of pension. In other words, the O.M. is more beneficial for the pensioner rather than earlier computation. Whether the notification is justified and valid in law, was considered by a Bench of this Court in *State of Rajasthan v. Seva Nivatra Karamchari Hitkari Samiti*, (1995) 1 SCALE 40 wherein it was held that the ratio in Nakara's case has no bearing in this matter and the introduction of the rule is not arbitrary or capricious. It is permissible to introduce different retiral benefit schemes for Government servants as indicated in the decisions held by this Court in *Krishan Kumar v. Union of India*, (1994) 4 SCC 207, *Indian Ex-Service League v. Union of India*, AIR (1991) SC 1182, and *State of Rajasthan v. Rajasthan Pensioner Samaj*, AIR (1991) SC 1743.

G In view of the above ratio and practical effect of the O.M., we are of the opinion that there is no invidious discrimination in the classification of the pensioners who retired at different dates and in computation of the pension for different periods. The Government's O.M. makes discernible difference between government employees retired at different dates for entitlement to pension. In fact, the O.M. is more beneficial to the retired employees than was contended in the petition.

Under the circumstances, the Tribunal was not right in following the A earlier decision of the another Tribunal at Bangalore accepting the ratio in *Nakara's* case without testing the facts and circumstances of this case. The appeal is accordingly allowed. No costs.

A.G.

Appeal allowed.